

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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REY CARTAS VELASQUEZ, ISAIAS  
GARCIA MATIAS, AUSENCIO DE LA  
RODAS, DANIEL FILADELFO PEREZ  
ORDONEZ, VICTOR JIMENEZ  
HERNANDEZ, ELOY GOMEZ JIMENEZ,  
MODESTO GOMEZ JIMENEZ,  
BONIFACIO JIMENEZ JIMENEZ,  
BARTOLO LOPEZ JIMENEZ,  
CATALINO JIMENEZ LOPEZ,  
CELESTINO JIMENEZ HERNANDEZ,  
NIRMAL CHAND, EDGAR CARASCO DE  
LOS SANTOS, DAVID CRUZ  
GUTIERREZ and AMABILIO SANTISO  
MORALES, individuals, Acting  
for Their Own and For the  
Interests of the General  
Public,

Plaintiffs,

v.

MOHAMMED KHAN, aka MOHAMMED  
NAWAZ KHAN, aka MOHAMMAD KHAN  
an Individual dba KHAN LABOR  
CONTRACTOR; HARBANS BATH;  
BALWINDER K. BRAR, RASHPAL S.  
PANU, HARBANS K. PANU; and  
RAMINDER K. BAINS,

NO. CIV. S 01-0246 MCE DAD

**ORDER GRANTING ATTORNEYS' FEES  
AND LITIGATION EXPENSES**

Defendants.

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2       After all appearing defendants in this action, except for  
3 Defendant Harbans Bath, either settled or agreed to a stipulated  
4 judgment, the case proceeded to a court trial against  
5 Defendant Bath on June 20, 2005. No appearance was made on  
6 behalf of Defendant Bath at trial, and pursuant to Findings  
7 and Fact and Conclusions of Law filed July 11, 2005,  
8 judgment against Bath in the amount of \$52,923.23 was  
9 rendered in favor of Plaintiffs Victor Jimenez Hernandez,  
10 Eloy Gomez Jimenez, Modesto Gomez Jimenez, Bonifacio  
11 Jimenez, Celestino Jimenez Hernandez, and Rey Cartas  
12 Velasquez ("Plaintiffs"). Plaintiffs now move for  
13 attorneys' fees and litigation expenses against Bath  
14 pursuant to California Labor Code §§ 218.5 and 1194(a), as  
15 well as California Code of Civil Procedure § 1021.5. That  
16 motion has not been opposed.

17       Although the above-enumerated statutes do  
18 unquestionably entitle Plaintiffs, as the prevailing party  
19 in this litigation, to attorneys' fees, the amount of those  
20 fees is limited by the cited California Labor Code sections  
21 to a "reasonable" amount. Further, under Code of Civil  
22 Procedure § 1021.5, California's private attorney general  
23 statute, the court has broad discretion to determine the  
24 amount of a reasonable fee award. See In re Gorina, 296  
25 B.R. 23 (C.D. Cal. 2002); Gregory v. State Bd. Of Control,  
26 73 Cal. App. 4th 584 (1999).

27       To determine a reasonable fee award, courts typically use  
28 the "lodestar" method for calculating attorney's fees. Under the

1 lodestar method, a court multiplies the number of hours the  
2 prevailing attorneys reasonably expended on the litigation by a  
3 reasonable hourly rate. See Hensley v. Eckerhart, 461 U.S. 424,  
4 433, 103 S. Ct. 1933, 1939, 76 L. Ed. 2d 40 (1983); see also  
5 Ketchum v. Moses, 24 Cal. 4th 1122, 1132, 104 Cal. Rptr. 2d 377,  
6 384 (2001) (expressly approving the use of prevailing hourly rates  
7 as a basis for the lodestar). Courts may then adjust the  
8 lodestar to reflect other particular aspects of a case. See Kerr  
9 v. Screen Extras Guild, Inc., 526 F.2d 67, 70 (9th Cir. 1975);  
10 see also Serrano v. Priest, 20 Cal. 3d 25, 141 Cal. Rptr. 315  
11 (1977). When deciding whether to adjust the lodestar, courts  
12 often use the following twelve factors:

13 (1) the time and labor required, (2) the novelty and  
14 difficulty of the questions involved, (3) the skill  
15 requisite to perform the legal service properly, (4) the  
16 preclusion of other employment by the attorney due to  
17 acceptance of the case, (5) the customary fee, (6) whether  
18 the fee is fixed or contingent, (7) time limitations imposed  
19 by the client or the circumstances, (8) the amount involved  
and the results obtained, (9) the experience, reputation,  
and ability of the attorneys, (10) the 'undesirability' of  
the case, (11) the nature and length of the professional  
relationship with the client, and (12) awards in similar  
cases.

20 Kerr, 526 F.2d at 69-70.

21 In calculating the initial lodestar figure, the Court  
22 first turns to the number of hours billed. Because this  
23 motion is unopposed, and because Plaintiffs' counsel has  
24 submitted detailed documentation to support the hours  
25 billed, the Court accepts the hours claimed, which include  
26 560.7 hours of attorney time and another 471.25 hours in  
27 staff time. That does not end the inquiry, because the  
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1 Court must next address the reasonableness of the claimed  
2 hourly rate, which is at two different levels for the five  
3 attorneys who participated in this case on behalf of  
4 Plaintiffs, and which also includes a separate rate for  
5 paralegal/law clerk hours expended.

6 Courts generally calculate reasonable hourly rates according  
7 to the prevailing market rates in the relevant legal community.  
8 Blum v. Stenson, 465 U.S. 886, 895, 104 S. Ct. 1541, 79 L. Ed. 2d  
9 891 (1984). The general rule is that courts use the rates of  
10 attorneys practicing in the forum district, here, the Eastern  
11 District of California located in Sacramento, California. Gates  
12 v. Deukmejian, 987 F.2d 1392, 1405 (9<sup>th</sup> Cir. 1993); Davis v.  
13 Mason County, 927 F.2d 1473, 1488 (9th Cir. 1991), cert. denied,  
14 502 U.S. 899, 112 S. Ct. 275, 116 L. Ed. 2d 227 (1991).

15 The burden is on the fee applicant to produce satisfactory  
16 evidence that the requested rates are "in line with those  
17 prevailing in the community for similar services by lawyers of  
18 reasonably comparable skill, experience and reputation." Blum,  
19 465 U.S. at 895 n.11. A court will normally deem a rate  
20 determined in this way to be reasonable. Id.

21 The rate claimed by Plaintiffs for hours charged by  
22 attorney Mark Talamantes, who has eight years' experience  
23 representing low-income and immigrant workers (Plaintiffs'  
24 Points and Authorities, 3:21-23) is \$350/hour. An hourly  
25 rate of \$350 is also sought for Julia Montgomery, who has  
26 experience similar to that of Mr. Talamantes. \$250/hour is  
27 requested for the other three attorneys who participated in  
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1 this case on behalf of Plaintiffs (Jennifer Ambacher, Daniel  
2 Torres and Jennifer Reisch), although all three of those  
3 individuals have been lawyers for less than three years.  
4 Finally, time spent by paralegal Juanita Ontiveros and law  
5 clerk Luis Alejo, which has also been deemed compensable  
6 (see *Guinn v. Dotson*, 23 Cal. App. 4<sup>th</sup> 262, 267-70 (1994))  
7 is claimed at a rate of \$100/hour.

8 In support of the rates claimed, Plaintiffs have  
9 submitted several declarations. In his declaration,  
10 Plaintiffs' attorney Mark Talamantes<sup>1</sup> identifies two out-of-  
11 district cases as a result of which he was awarded fees at  
12 the rate here requested of \$350/hour. Because fees should  
13 be awarded based on the prevailing rates in this district,  
14 however (Deukmejian, 987 F.2d at 1405), any rates awarded by  
15 the Central or Northern Districts of California are not  
16 germane to a fee entitlement here in the Eastern District of  
17 California.

18 Aside from the Talamantes Declaration, the only other  
19 Declaration submitted by a Sacramento attorney<sup>2</sup> is from  
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21 <sup>1</sup>As far as can be ascertained from Plaintiffs' papers, all  
22 of the attorneys and staff who worked on this case on Plaintiffs'  
23 behalf, including Mr. Talamantes, are affiliated with the  
California Rural Legal Assistance Foundation, whose offices are  
here in Sacramento.

24 <sup>2</sup>While Plaintiffs do submit a lengthy declaration from  
25 Richard Pearl, a sole practitioner in the San Francisco Bay Area,  
he cites no fee awards arising within the Eastern District  
26 further does not identify any law firm hourly rates as stemming  
from the Sacramento region. While Mr. Pearl claims generally to  
27 "have some familiarity with Sacramento rates", and goes on to  
conclude that the rates claimed here "seem to be within the range  
28 (continued...)

1 Jason Rabinowitz. Mr. Rabinowitz, whose eight years of  
2 experience is similar to that of Mr. Talamantes, states that  
3 his current billing rate for individual employment cases is  
4 \$300/hour. (Rabinowitz Decl., ¶ 8). He goes on to state  
5 that billing rates at his firm for such work range from \$250  
6 to \$350 per hour, and believes that market rates in  
7 Sacramento range from \$250 to \$375 per hour for attorney  
8 time. In addition, while Rabinowitz claims that paralegal  
9 rates range between \$95.00 and \$110.00, he states nothing  
10 about compensable rates for a student law clerk like Mr.  
11 Alejo.

12 On the basis of the Rabinowitz Declaration, Plaintiffs  
13 have not established entitlement to attorneys' fees in  
14 excess of \$300/hour for time expended by either Mark  
15 Talamantes or Julia Montgomery. In addition, because the  
16 Court's own experience leads it to conclude that compensable  
17 rates for that work should not exceed \$300/hour in this  
18 district, Plaintiffs' fee recovery shall be limited  
19 accordingly.<sup>3</sup> Moreover, given the fact that the other  
20 three attorneys working on this case (Daniel Torres,  
21 Jennifer Reisch and Jennifer Ambacher) all have been  
22 practicing lawyers for less than three years, the Court

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24 <sup>2</sup>(...continued)  
25 of rates charged for comparable work by comparably qualified  
26 Sacramento attorneys", he otherwise provides no evidence in  
support of those propositions.

27 <sup>3</sup>With respect to Mark Talamantes, the actual time documented  
28 is for 444.7 hours rather than 445, as requested in Plaintiffs'  
Memorandum of Points and Authorities. The reimbursement amount  
has been adjusted to reflect that time discrepancy.

1 believes that the amount requested by Plaintiffs for their  
2 services, at \$250/hour, is excessive. \$200/hour will  
3 instead be allowed as to both Mr. Torres and Mr. Reisch.  
4 The claim for Jennifer Ambacher's fees is denied at this  
5 time, without prejudice, because the documentation to  
6 support that claim is insufficient.<sup>4</sup>

7 With respect to compensation for legal staff  
8 expenditures, Juanita Ontiveros' paralegal services at the  
9 rate of \$100/hour are awarded as requested. Plaintiffs have  
10 presented no evidence to support an allowable rate of  
11 \$100/hour for time expended by a student law clerk (Luis  
12 Alejo), however, and compensation for that time will be  
13 established at \$50/hour.

14 Multiplying the hourly rates permitted by the court by  
15 the total time expended by Plaintiffs' attorneys and office  
16 staff yields a total lodestar figure of \$192,555.00.  
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19 <sup>4</sup>First, Plaintiffs' Points and Authorities refer to 57.4  
20 hours spent by Ms. Ambacher at a claimed rate of \$250/hour. That  
21 computation does not yield the total amount sought for Ambacher  
22 (at \$10,292.50). Examination of Ms. Ambacher's time records, as  
23 attached to the Declaration of Julia Montgomery, in fact refer to  
24 some of the claimed time billed at \$100/hour. The Montgomery  
25 Declaration, at ¶ 9, states that Ms. Ambacher began working for  
26 the California Rural Legal Assistance Foundation in September of  
27 2004, and did not become licensed as an attorney until February  
28 of 2005. The Court cannot determine absent conjecture in what  
capacity Ms. Ambacher worked on this case before February of  
2005. In addition, although the Montgomery Declaration refers to  
Ms. Ambacher's admission to the bar in February of 2005, at least  
one of the entries billed at a lower rate is from that time  
period. Finally, no explanation is provided as to why Ms.  
Ambacher's bar admission occurred in February of 2005 which is  
outside the customary time parameters for bar admission. For all  
these reasons, there are too many unresolved issues with respect  
to Ms. Ambacher to allow recovery for her time at this juncture.

1 Plaintiffs next asks this Court to apply a 1.2 multiplier to  
2 the lodestar figure under FEHA. To the extent that a party seeks  
3 a fee enhancement, it bears the burden of proof. Ketchum v.  
4 Moses, 24 Cal. 4th 1122, 1138, 104 Cal. Rptr. 2d 377 (2001).  
5 Nothing requires a trial court to include a fee enhancement to  
6 the basic lodestar figure for contingent risk, exceptional skill,  
7 or other factors. See id. Courts simply retain the discretion  
8 to do so in the appropriate case. See id.

9 Plaintiffs' argument in support of a fee enhancement in this  
10 case is limited to the claim that the California Rural Legal  
11 Assistance Foundation, as a non-profit organization with limited  
12 resources, took a risk in litigating this case. While that may  
13 be true, in the view of this Court nothing otherwise about the  
14 case was particularly novel, difficult or complex. Consequently  
15 the Court declines to enhance the lodestar amount (as enumerated  
16 above) through the multiplier advocated by Plaintiffs.

17 In addition to attorneys' fees, Plaintiffs also request  
18 reimbursement for certain expenses in addition to their  
19 statutorily recoverable costs. Such expenses may be recouped to  
20 the extent they "would normally be charged to a paying client."  
21 Harris v. Marhoefer, 24 F.3d 16, 19 (9<sup>th</sup> Cir. 1994). The Court  
22 concludes that the costs claimed herein (\$2,249.12) are  
23 reasonable and will be awarded.

24 In sum, for the reasons stated above, Plaintiffs' Motion for  
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1 attorneys' fees and litigation expenses is GRANTED, in part.<sup>5</sup>  
2 Plaintiffs' reasonable attorney's fees are \$192,555.00 and their  
3 reasonable litigation expenses (in addition to any costs  
4 recoverable by statute) are \$2,249.12. Those amounts, which  
5 total \$194,804.12, shall be paid by Defendant Harbans Bath.

6 IT IS SO ORDERED.  
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8 DATED: September 28, 2005  
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11 MORRISON C. ENGLAND, JR  
12 UNITED STATES DISTRICT JUDGE  
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Because oral argument would not be of material assistance, this matter was deemed suitable for decision without oral argument. E.D. Local Rule 78-230(h).